

BACKGROUND FOR POLICY RECOMMENDATIONS

Below is the background information on the policy recommendations that was distributed as part of the November 9, 2022, HAC packet. This background information has been marked up with comments supplied by members of the HAC and public. Where appropriate, staff responses have been inserted as well.

Project Threshold Trigger

Background

This threshold determines when a residential project becomes subject to the County's Inclusionary Housing Ordinance. Thresholds currently used by sampled jurisdictions range from 3 to 20 new lots/units. The average threshold is 9.4 new lots or units, and the mean threshold is 5.5 triggering some level of affordable housing requirements. The County's threshold has varied from the first new unit being required to pay an in-lieu fee equal to 2% of the cost to construct an affordable unit to allowing up to 6 new lots/units before requiring compliance. Since October 2010, the County threshold has been 3 new lots/units.

Developers, including for profit and non-profit, who participated in the County's outreach efforts encouraged the County to set a higher threshold. The rationale was that the cost of complying with the Inclusionary Housing Ordinance was acting as an impediment to housing development. Housing advocates called for a lower threshold to capture more potential affordable housing.

Related to the threshold for requiring compliance with the Inclusionary Housing Ordinance is the threshold for when projects must start building affordable units. As noted above, the County requires all projects with 3 or more new lots or units to comply with the Ordinance. Projects of 3 or 4 units may satisfy their obligation by payment of an in-lieu fee. Projects of 5 or more units are required to provide at least 1 affordable unit for every 5 units proposed.

The County recently established the Monterey County Local Housing Trust Fund (MCLHTF). The MCLHTF will provide a local source of financial support for the development of affordable housing. Dedicating in-lieu fees to ensure a steady inflow of capital to the MCLHTF may be a compromise between the two camps.

- **Public Comments:**
 - **How will this be enacted? Every time a project is approved on a case-by-case basis or routinely through inclusion here. Think there needs to be some thought put into this.**
- **Staff Response:**
 - **The design of the MCLHTF does require more thought and staff hopes to have draft guidelines for the HAC and public review/comment by the end of February 2023. Current thinking is that the County will issue an annual Notice of Funding Availability in December with awards being made by June of the following year. Depending on initial funding requests, the County may accept additional funding proposals "over-the-counter" during the balance of the calendar year.**

Policy Considerations:

- What is the minimum number of units required for a project to have to comply with Inclusionary Housing Ordinance?
- What is the minimum project size before on-site units are required?

Development Exempt from Inclusionary Housing Ordinance

Background

Most affordable/inclusionary housing ordinances include exemptions. Monterey County has always exempted projects that: are part of a larger residential development that has already been subjected to the requirements of the Inclusionary Housing Ordinance; development where the applicant can demonstrate that there is no reasonable relationship between the development and Inclusionary requirements; would violate the state or federal Constitution...; development for Farmworkers (farmworkers is not defined); mobile home park development. The Board of Supervisors has also adopted a policy that provides a limited exemption for agricultural subdivisions that create lots of at least 40-acres. In these cases, the subdivision is approved with an agreement to pay in-lieu fees on each lot as residential building permits are issued.

Most Employer Sponsored Housing in Monterey County is for seasonal farmworkers or hospitality workers and is generally considered “affordable”.

Policy Considerations:

- Is it “fair” to exempt housing for farmworkers but not employer sponsored housing for hospitality workers?
 - **Public Comments:**
 - **Yes, it is fair as the State recognizes farmworkers in its Special Need category. If you do hospitality, on what basis and how do you not do retail clerks, and many other categories where the workers make less?**
 - **Staff Response:**
 - **Hospitality is only used as an example. The intent would be to exempt all employer sponsored housing projects from the Ordinance to encourage development of all subsidized housing.**
- The County has commissioned a nexus study to determine the appropriate affordable housing linkage fee to charge non-residential development which could make more, currently exempt, development subject to the Ordinance.
 - **Public Comments:**
 - **This is interesting info, but will it be subject to this particular Ordinance?**
 - **Staff Response:**
 - **The commercial linkage fee will be submitted to the Board of Supervisors for their consideration separately from the current effort to update the Ordinance. If adopted, the fee will be incorporated into the Ordinance.**

Affordability Distribution/Requirements

Background

The affordability level refers to a household's annual income, adjusted for the number of people in the household, as a percentage of the area median income (AMI). The 2022 median household income for a four-person household in Monterey County is \$90,100. The Inclusionary Housing Ordinance and General Plan Land Use Policies requires that 6% of the units in a project be affordable to households earning no more than 50% of AMI (very low-income); 6% be affordable to households earning 80% of AMI (low-income); 8% of the units be affordable to households earning no more than 120% AMI (moderate-income); and, 5% of the units be affordable to households earning up to 150% or 180% AMI (workforce 1 and 2-incomes).

Generally, affordable housing means that a very low- or low-income household is spending no more than 30% of their monthly income on all housing costs (mortgage/rent, HOA dues, taxes, and utilities). For moderate- and workforce-income units it means spending no more than 35% of monthly income on all housing costs.

- **Public Comments:**
 - This is true for for-sale, but is it for rental also?
- **Staff Response:**
 - Yes, it is.

Affordable units require subsidies to be financially viable. These subsidies may be passed on to a small group of consumers through higher market rate rents or sales prices for other units within the development. These subsidies may also be passed on using Housing Choice Vouchers, low-income housing tax credits, or other public financing mechanisms. Units developed to comply with the Inclusionary Housing Ordinance and without other subsidies spread the subsidy across the market rate units through higher sales prices or rents.

The Workforce 1- and 2-income categories have been challenging for the County to successfully implement. The County has experience with two projects that have constructed units at these affordability tables. The first, the Commons at Rogge Road, was required to provide 75-units. In 2008, the developer petitioned the Board of Supervisors to waive this condition of approval because the units were not selling. The workforce sales price was the same as market rate but came with limitation on purchaser upgrades, resale limits, and income eligibility documentation that made the units uncompetitive in the market. The Board released the developer from this condition of approval.

The second project is East Garrison. This project has faced similar issues and required the developer to make concessions to potential purchasers to sell the units. The units were only burdened with a one-year term of affordability, meaning subsequent purchasers were not going to benefit from a, potentially, below market purchase price.

Policy Considerations:

Should the Workforce 1 and 2 affordability levels be eliminated?

- **HAC Comments:**
 - One HAC member (appointee) indicated support for eliminating this affordability level as these units do not address Regional Housing Needs Assessment affordability requirements.
- **Public Comments:**
 - One member of the public indicated support for eliminating this affordability level.
- **Staff Response:**
 - None.

What is the correct mix of affordability?

- **HAC Comments:**
 - One member of the HAC expressed concern about having a “one-size fits all” affordability requirement for the entire County. This member expressed a belief that having two or more rates could be a mechanism for balancing the cost of developing affordable units in different areas of the County.
- **Public Comments:**
 - One member of the public commented that the distribution should be 7.5% very low; 7.5% low; or 5% very low; 10% low and 5% moderate.

Term of Affordability

Background:

The term of affordability determines how long an affordable unit will remain affordable. Rental units, especially those with other government financing, are typically required to remain affordable for 55-years.

Homeownership is one of the main drivers of intergenerational wealth transfer. Placing limits on the resale value of an Inclusionary home can reduce the amount of wealth, in the form of equity, is available to transfer between generations. However, without the initial subsidized purchase price of an Inclusionary unit the homeowner may not ever achieve this element of the American Dream.

Policy Considerations:

What is the long-term objective of the Inclusionary Housing Ordinance? Is it to:

- Provide a stable source of affordable homeownership opportunities for limited intergenerational wealth creation?
 - **HAC Comments:**
 - **One HAC member indicated support for this objective.**
 - **Public Comments:**
 - **One member of the public indicated support for this objective.**
 - **Staff Response:**
 - **None.**
- Provide “windfall” opportunities for a few households?

OTHER BACKGROUND INFORMATION

H2A Housing & Employer Sponsored Housing

Background

“H2A” housing is provided for foreign guest workers in agriculture. Employers utilizing H2A visas must demonstrate to the U.S. Department Labor and California Employment Development Department that they have housing for these visa holders before the visas are issued. These units fall under a category of housing regulated by the Employer Sponsored Housing Act which establish minimum standards that must be met. Employer sponsored housing is NOT limited to agricultural employers. The County also has employer sponsored housing operated by the State and several hospitality employers in the Big Sur area. Employer Sponsored Housing may not even be associated with a specific employer. The County’s 19 single family units at Kents Court are covered by an Employer Sponsored Housing Permit. With the Permit in place, the County has no obligation to ensure that units are occupied by households with a member working for a specific employer or even in a specific industry, and there are no rent or income limitations imposed by the Permit.

The current trend by developers is to construct 2-bedroom units with shared kitchen and bathroom facilities for up to 8 unrelated people. These units can, with interior tenant improvements, be converted to regular apartment units.

Inclusionary Housing Ordinance Context

- Farmworker Housing, which these units are, is exempt from the County’s Inclusionary Housing Ordinance.
- The County has been recommending “H2A” projects requesting a density bonus make the affordable units required to qualify for the bonus be regular units and occupied year-round.
 - **Public Comments:**
 - **Has this happened and what is record on it? Seems problematical.**
 - **Staff Response:**
 - **The County is currently working with one applicant to implement the staff recommendation. Implementing the recommendation, if approved by the Planning Commission, will require the applicant to enter into an Inclusionary Housing Developer Agreement that will identify which units are affordable at specific levels of affordability. Consistent with other rental projects, the applicant will be required to have the County income qualify potential tenants and be subject to annual monitoring to ensure tenants remain income qualified.**

Policy Considerations:

- Should “H2A” units lose their exemption from the Inclusionary Housing Ordinance and be subject to the commercial impact fee if it is adopted by the Board of Supervisors?
 - **Public Comments:**
 - **No**

- Should the existing exemption for “farmworker” housing in the Inclusionary Housing Ordinance be expanded to exempt all types of employer-sponsored housing.
 - **Public Comments:**
 - No
- If “farmworker”, H2A, and/or all employer sponsored housing remains exempt from the Inclusionary Housing Ordinance, should the developer be required to execute a Standby Inclusionary Housing Agreement that becomes effective if the Employer Sponsored Housing permit is not renewed or stops using the property for the population that initially qualified for the exemption?
 - **Public Comments:**
 - Most definitely.

Density Bonus

Background:

The County and State have adopted laws that encourage developers to include affordable units in projects by offering concessions that improve a project’s economic feasibility. As the name implies, the primary concession is an increase in density above what is normally allowed by local zoning ordinances. The increase in density is determined by the percentage of units at a given affordability level in a project. For example, if the developer of a 100-unit apartment building voluntarily restricts 5 to be occupied by very low-income households, they would qualify for 20 additional market rate units by using the density bonus. The same project could also elect to restrict 10-low-income households or 25 moderate-income units and still receive 20 additional market rate units. In addition to an increase in units, developers may also request up to 3 more concessions, based on the percentage and affordability of qualifying units, from the County. These regulatory incentives or concessions can be almost anything that result in identifiable and actual cost reductions for the development.

- Density bonuses of up to 35% are allowed.
- Density bonus units are exempt from affordability calculations.
- Affordable units must be subject to enforceable deed restrictions to ensure continued affordability.
 - For Sale – Restricted initial sales price plus equity sharing.
 - Rentals – 55-years
- Case law requires units subject to local affordability restrictions, such as inclusionary units, count towards density bonus affordable units.

Inclusionary Housing Ordinance Context:

There is no direct connection between the County’s Inclusionary Housing Ordinance, the County’s Density Bonus Ordinance, or the State Density Bonus Law. Savvy developers can, with minimal changes to their project can use the County’s Inclusionary Housing Ordinance to automatically receive a 20% increase in allowed units and 1 concession. The County’s Inclusionary Housing Ordinance applies a “waterfall” to fractional units so that fractional units are added to the next affordability level, e.g., a fractional very low-income unit is added to the low-income units.

For example, a 25-unit apartment would require 1.5 very low-income (6%), 1.5 low-income (6%), 2 moderate-income (8%) and 1.25 workforce units (5%). The application of the “waterfall” results in 1 very low-income unit (4%), 2 low-income units (8%), 2 moderate-income units (8%), 1 workforce unit, and 0.25 fractional units paid as an in-lieu fee. By voluntarily having the very low/low “waterfall” reverse, the project results in 8% of the units being very low-income and exceeding the 5% threshold to qualify for the density bonus. The project would gain 5 additional market rate units and qualify for one concession to offset the cost of the very low-income unit.

Policy Considerations:

None. The County is required to either adopt a Density Bonus Ordinance, which it has, or be subject to state density bonus law.

Affordable by Design/Range of Housing Types

Background:

Affordable by design is a planning concept that assumes certain types of housing and building styles are more affordable. Generally, the costs are reduced by requiring smaller lots, building common wall units, shared outdoor spaces, and minimal/no on-site parking. Accessory Dwelling Units, Junior Accessory Dwelling Units, and townhouses are examples of units that are traditionally thought of as affordable by design.

- **Public Comments:**
 - **Not sure townhouses should be included here, they are essentially apartments.**

While the units may be affordable by design, developers are not required to sell the at “affordable” levels and will generally try to sell the units for the highest price the market will bear.

- **Public Comments:**
 - **Except townhouses?**

Inclusionary Housing Ordinance Context:

There is no direct link between Affordable by Design units the Inclusionary Housing Ordinance. The intent of the Inclusionary Housing Ordinance has been to create deed restricted units that are not subject to market pricing forces.

- **Public Comments:**
 - **Need to require townhouses to be restricted.**
- **Staff Response:**
 - **Townhouses are subject to the Inclusionary Housing Ordinance and restricted in the percentages in effect that the time that an application to construct a townhouse project is deemed complete.**

Policy Considerations:

Affordable by design projects without deed restrictions will satisfy the County’s Regional Housing Needs Allocation (RHNA) obligation to zone and permit affordable housing. For units to count towards the County’s RHNA, the County must demonstrate how the unit

affordability was determined. The “Gold Standard” when determining affordability is a recorded and enforceable deed restriction limiting the sales price or rent limit of the unit.

- **Public Comments:**

- Not sure how you get this on ADUs.

- **Staff Response:**

- Independent of a subsidy tool that triggers a recorded and enforceable occupancy restriction, the County cannot count ADUs as affordable units for RHNA reporting.